

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 997 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

CHINUBHAI CHHAGANBHAI

Versus

COLLECTOR

Appearance:

MR AJ PATEL for Petitioners

Mr.K.G.Sheth, AGP, for Respondent No. 1, 2

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE C.K.BUCH

Date of decision: 23/03/2000

C.A.V. JUDGMENT : (Per: Kadri, J.)

1. Appellants-original claimants, have filed this appeal under Section 54 of the Land Acquisition Act, 1894 (to be referred to as 'Act' for short) read with Section 96 of the Code of Civil Procedure, 1908, challenging judgment and award dated November 9, 1984, passed by learned Second Extra Assistant Judge,Nadiad, in Compensation Case No.4 of 1982.

2. A proposal was made to the State Government to acquire lands of town Dakor for extension of village drainage site under the scheme of Indian Government at Dakor. The said proposal was scrutinized by the Government and notification to acquire lands of the appellants came to be issued under Section 4(1) of the Act which was published in the Government Gazette on November 25, 1976. The land owners filed their objection under Section 5A of the Act against the proposed acquisition. After considering their objections, the Land Acquisition Officer had forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands of town Dakor which were specified in the notification published under Section 4(1) of the Act were needed for the public purpose. Therefore, declaration under Section 6 of the Act was made which was published in the Government Gazette on December 16, 1976. Notices under Section 9(3)(4) of the Act were issued to the appellants, and they had claimed compensation before the Land Acquisition Officer at Rs.2000/- per Are for agricultural lands and Rs.3000/per Are for non-agricultural lands. On the basis of the materials placed before him, the Land Acquisition Officer made his award on March 31, 1980, and offered compensation to the claimants at the rate of Rs.14.00 per sq.mtr. for land bearing Survey No.360 and Rs.20.00 for land bearing Survey Nos.120 and 121. The claimants were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate. Therefore, they submitted application in writing under Section 18 of the Act requiring the Land Acquisition Officer to refer the application to the Court for determination of adequate compensation. Accordingly, reference was made to the District Court, Kheda, which was numbered as Compensation case No.4 of 1982.

3. To substantiate their claim, the appellants examined (i) Chinubhai Chhaganbhai Exh.12, (ii) Chimanlal Manilal, Exh.14, (iii) Karimbhai Ismailbhai at Exh.16, (iv) Kabhaibhai Manabhai, Exh.18, (v) Maganbhai Somabhai Exh.20, and (vi) Shantilal Chhotalal Joshi at Exh.26. The appellants produced documentary evidence in form of

sale deed dated December 27, 1973.

4. The Reference Court, on appreciation of oral as well as documentary evidence, came to the conclusion that sale deed relied upon by the claimants-appellants was not relevant and comparable as it related to non-agricultural lands. The Reference Court further concluded that compensation offered by the Land Acquisition Officer was just and adequate. On the basis of abovereferred to conclusions, the Reference Court dismissed claim petition filed by the appellants, giving rise to filing of this appeal by the appellants.

5. Learned counsel appearing for the appellants, has submitted that sale deed dated December 27, 1973 in respect of land bearing Survey No.918, admeasuring 3025 sq.mtr, for consideration of Rs.37,530/- [i.e. Rs.12.41 per sq.mtr.] was most comparable sale instance produced by the appellants and the Reference Court had seriously erred in not placing reliance on the said sale deed for determination of market value of the acquired lands in the present case. Learned counsel for the appellants further submitted that the acquired lands were touching village Dakor and therefore the same were having building potentiality and the area in which lands were situated was fast developing area and, therefore, the Reference Court had erred in not awarding additional compensation to the appellants. It is submitted by learned counsel for the appellants that the appellants have claimed a reasonable compensation and, hence, the appeal deserves to be allowed.

6. Learned counsel for the respondents has vehemently argued that the appellants had not led any cogent and reliable evidence to establish that they were entitled to compensation at the rate of Rs.2000/- per Are for the agricultural lands and Rs.3000/- per Are for the non-agricultural lands and the documentary evidence produced by the appellants was insufficient for determination of market price of acquired lands. Learned counsel for the respondent further submitted that a just and adequate compensation was awarded to the appellants by the Land Acquisition Officer and the appeal deserves to be dismissed.

7. We have heard learned counsel for the parties at length. We have also taken into consideration documents as well as oral evidence produced by learned counsel for the parties for our perusal before deciding this group of appeals.

8. Appellant No.1, Chinubhai Chhaganbhai, was examined at Exh.12, He deposed that acquired land bearing Survey No.120-121 was situated on the western side of Kapadwanj road. Land bearing Survey Nos.361 and 362 belonged to the Panchayat which was non-agricultural land. He also deposed that land bearing Survey Nos.120 and 121 was situated at a distance of 1600 feet from Ranchhod Raiji Temple. He deposed that his land bearing Survey no.360 was situated in more developed area than Survey Nos.120 and 121. He claimed that agricultural lands near town Dakor were sold at Rs.1500/- per Are. He further deposed that his acquired lands were within the limits of the Panchayat. He claimed that he had purchased land bearing Survey No.360 to construct a bungalow and organize a society. In cross examination, the witness admitted that his acquired land of Survey No.360 was agricultural land. Claimants' witness No.2, Chimanlal Manilal Joshi, Exh.14, deposed that acquired land bearing Survey No.360 was situated near village site and was surrounded by residential houses. He has stated that acquired land of Survey No.120 was also surrounded by residential houses. During his deposition, he produced sale deed Exh.15. Claimants' witness No.3, Karimbhai Ismailbhai, Exh.16, deposed that he had 1/4th share in land bearing Survey No.2019 admeasuring 0 Acre 2 Gunthas. He claimed that the said land was purchased by him for consideration of Rs.3851. The witness produced sale deed of Survey No.2019 at Exh.17. Claimants' witness No.4, Kabhaibhai Manabhai, Exh.18, during his deposition, produced sale deed Exh.18 in respect of lands bearing Survey No.72 and 54. The sale deed was executed on May 7, 1974 for Rs.42,735/- for the land admeasuring 45 Gunthas. The claimant's witness No.5, Maganbhai Somabhai, Exh.20, produced sale deed Exh.25 in respect of land bearing Survey No.918 admeasuring 30 Gunthas for Rs.37,530/-. He deposed that land bearing Survey No.918, which was sold under sale deed, was situated near acquired land of Survey No.360. Claimants' witness No.6, Shantilal Chhotalal Joshi, Exh.26, deposed that the acquired lands of Survey Nos.120, 121 and 360 were situated near residential locality of town Dakor and were having building potentiality.

9. The evidence of claimants' witnesses suggests that acquired lands of Survey No.120 and 121 and 360 were situated near residential zone and fast developing locality of town Dakor. From the sale deeds produced by the claimants, it becomes evident that agricultural lands in village Dakor were sold at Rs.12.41 per sq.mtr on December 27, 1973, i.e. three years prior to date of acquisition. The other sale deed produced by claimants

at Exh.15 was in respect of non-agricultural land bearing Survey No.2163 and, therefore, we are of the opinion that reliance cannot be placed on the said sale deed for determination of market value of the present acquired agricultural land, particularly when sale deed of agriculture land is available. It is an admitted fact that acquired lands were situated near town of Dakor and, therefore, they were included in village drainage site under the present acquisition. Sale price of lands of Survey No.918, admeasuring 3025 sq.mtr. for Rs.37,530/-, as on December 27, 1973, comes to Rs.12.41 ps per sq.mtr. Land bearing Survey No.360 under acquisition was agricultural land whereas land bearing Survey Nos. 120 and 121 was non-agricultural lands. Sale deed Exh.26 is in respect of agricultural lands. Therefore, we are of the opinion that it is just and proper to place reliance on sale deed Exh.26 for the purpose of determination of market value of land bearing Survey No.360 which is agricultural land. As per sale deed Exh.26, sale price was Rs.12.41 per sq.mtr as on December 27, 1973 and, if gradual rise in price at the rate of 10% per year i.e. 30% is given for gap of three years between the date of sale deed Exh.26 and the date of acquisition i.e. November 25, 1976, market value of acquired agricultural land bearing Survey No.360 can be determined at the rate of Rs.18/per sq.mtr. It was never brought to the notice of the Court that the lands acquired in the present case have certain disadvantages in comparison to the lands under sale deed Exh.26.

10. Lands bearing Survey Nos.120 and 121 were non-agricultural lands. For the purpose of determination of market value of acquired non-agricultural lands bearing Survey Nos.120 and 121, we shall have to take into consideration sale deed in respect of sale of non-agricultural land. Sale deed Exh.15 was in respect of land bearing Survey No.2163 admeasuring 405 sq.mtr, which was executed on March 20, 1975, for consideration of Rs.25,004/-., and price comes to Rs.49.02 per sq.mtr. Sale deed Exh.15 was in respect of small parcel of land of 405 sq.mtrs, whereas the present acquired lands admeasured 4856 sq.mtrs. Land bearing Survey No.2163 was situated in more developed locality. Therefore, appropriate deductions should be made from the price reflected in sale deed Exh.15 for the purpose of determining correct market value of the non-agricultural lands acquired in the present case. In our opinion, deduction of 50% shall have to be made to the market price of Rs.49.02 per sq.mtr, because of smallness of area and the land being situated in more developed area. Taking into consideration the above factors, in our

opinion, market price of acquired non-agricultural lands bearing Survey Nos. 120 and 121, can be determined at the rate of Rs.25 per sq.mtr on the date of acquisition. Even though the appellants-claimants had adduced sufficient evidence for their claim of enhanced compensation before the Reference Court, the Reference Court had ignored the said evidence by observing that the claimants had not adduced any other evidence so as to enable the Court to award compensation at the enhanced rate. As discussed earlier, sale instances relied upon by the claimants were sufficient evidence for determination of market value of the present acquired lands. It is evident from the evidence produced by the claimants that acquired lands were just touching town of Dakor which was developing town and price of land was increasing gradually every year. While determining market value of acquired land, it was the duty of the Court to sit in the arm chair of the claimants and to compensate them by awarding a just compensation. The claimants had lost their valuable lands which were acquired for the public purpose of extension of village site drainage. The approach of the Reference Court by rejecting reference application filed by the appellants is not at all justiciable. The Reference Court had failed to observe and follow set principles laid down by the Supreme Court in various decisions for determination of market value of the acquired lands.

11. Learned counsel for the appellants submitted that the appellants should be given benefit of amended provisions of Section 23(1-A), 23(2) and 28 of the Act, as award of the Reference Court was passed on September 25, 1984 i.e. after the Amendment Act of 68 of 1984 came into force. Learned counsel for the appellants, in support of the above submission, has placed reliance on the decisions of the Supreme Court (i) AIR 1995 Supreme Court 581, in the case of K.S.Paripoornan vs. State of Kerala; (ii) AIR 1995 Supreme Court 1424 in the case of Mir Pazeelath vs. Special Deputy Collector, Land Acquisition, Hyderabad; (iii) AIR 1985 Supreme Court 516 in the case of Bhag Singh vs. Union Territory of Chandigarh; and, (iv) AIR 1989 Supreme Court 1933 in the case of Union of India vs. Raghubir Singh. In our opinion, the decisions relied upon by learned counsel for the appellants do not lay down principle that the claimants are entitled to benefit under Section 23(1-A) of the Act if the award of Collector is made prior to coming into force of Amendment Act 68 of 1984. However, in view of the decision relied upon by learned counsel for the appellants, reported in AIR 1989 Supreme Court 1933, in the case of Raghubir Singh (supra) the claimants

shall be entitled to benefits under the amended provision of Section 23(2) of the Act, i.e. solatium at 30% and interest at the rate of 9% per annum for the first year and, thereafter, at the rate of 15% per annum for the subsequent years till the deposit is made.

12. As a result of foregoing reasons, the appeal filed by the appellants is partly allowed. It is held that the market value of the acquired agricultural lands bearing Survey No.360 of town Dakor on the relevant date was Rs.18 per sq.mtr, as on November 25, 1976, whereas the market value of the non-agricultural lands of Survey No.120 and 121 of town Dakor was Rs.24/- per sq.mtr. The judgment and award dated November 9, 1984, passed by learned Second Extra Assistant Judge, Nadiad, in Compensation Case No.4 of 1982. is modified to the extent that the claimants would be entitled to enhanced compensation of the acquired agricultural lands bearing Survey No.360 of town Dakor on the relevant date at Rs.18 per sq.mtr, as on November 25, 1976, whereas the market value of the non-agricultural lands of Survey No.120 and 121 of town Dakor at Rs.24/- per sq.mtr. with statutory benefits under Sections 23(2) and interest under Section 28 of the Act. We make it clear that the appellants shall not be entitled to statutory benefit under Section 23(1-A) of the Act. The Office is directed to draw decree in terms of this judgment. There shall be no order as to costs.

13. After pronouncement of the judgment, learned counsel for the appellants has submitted that the appellants had lost their agricultural lands in the year 1980 and, therefore, the respondents should be directed to deposit awarded amount within reasonable time. In our opinion, the request of learned counsel for the appellants deserves consideration and, therefore, we direct the respondents to deposit awarded amount as per this judgment in the Reference Court within three months from today.

March 23, 2000 (M.H. Kadri, J.)

(C.K. Buch, J.)

(swamy)